

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

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|---|---|---|
| United States District Court | | District: <i>of New Hampshire</i> |
| Name (under which you were convicted): <i>Dominic S. Ali</i> | | Docket or Case No.: <i>2008, 858, 62, 64</i> |
| Place of Confinement: <i>New Hampshire State Prison, men</i> | Prisoner No.: <i>81829</i> | |
| Petitioner (include the name under which you were convicted) <i>Dominic S. Ali</i> | Respondent (authorized person having custody of petitioner) <i>v. Richard M. Gerry, warden</i> | |
| The Attorney General of the State of <i>New Hampshire</i> <i>Nicholas Cort, esq</i> | | |

PETITION

- Name and location of court that entered the judgment of conviction you are challenging:
*The State of New Hampshire Superior Court
Hillsborough County Northern District*
 - Criminal docket or case number (if you know): *2008, 858, 859, 862 864-*
- Date of the judgment of conviction (if you know): *September 26, 2008*
 - Date of sentencing: *February 2, 2009*
- Length of sentence: *six years*
- In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
- Identify all crimes of which you were convicted and sentenced in this case:
*Two counts of second degree assault, One count of obstruction
to report a crime, One counts of false imprisonment
12 month stand committed on the two misdemeanors conviction
five to ten on one count of second degree assault connect
with three and half on the second count of second degree assault.*
- What was your plea? (Check one)

| | |
|--|---|
| <input checked="" type="checkbox"/> (1) Not guilty | <input type="checkbox"/> (3) Nolo contendere (no contest) |
| <input type="checkbox"/> (2) Guilty | <input type="checkbox"/> (4) Insanity plea |

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: *The State of New Hampshire Supreme Court*

(b) Docket or case number (if you know): *2009-0040*

(c) Result: *Affirmed in Part and vacated in Part -*

(d) Date of result (if you know): *Dec 13, 2010*

(e) Citation to the case (if you know):

(f) Grounds raised: *Whether the trial court erred in allowing the State to present experts testimony from two experts. Trial Court erred for not allowing defendant attorney to question the victim about her open D.E.F case. Trial Court erred in failing to dismiss one of the two second degree assault and giving two separate sentence that violate State of Fed constitutions -*

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☐ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: *The State of New Hampshire Superior Court*
Merrimack District
 (2) Docket or case number (if you know): *217-2011-cv-00746*
 (3) Date of filing (if you know): *10/28/2011*
 (4) Nature of the proceeding: *Hearing*
 (5) Grounds raised: *Ineffective assistance of Counsel /*
Abuse of Discretion
Prosecutorial misconduct

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes☐ No

(7) Result:

Denied petition

(8) Date of result (if you know):

March 3rd, 2012

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: The New Hampshire Supreme Court
- (2) Docket or case number (if you know): 217-2011-CV-00746
- (3) Date of filing (if you know): March 20, 2012
- (4) Nature of the proceeding: Declined
- (5) Grounds raised:
 - Abuse of Discretion
 - Denial of Constitutional Right of an Attorney on Appeal and motion for new trial
 - Prosecutors misconduct

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: *The trial Court abuse of Discretion*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The State need two allege crime in order to charge the petitioner with an enhance penalty. The trial Court base a sentence enhancement on a fact not decided beyond a reasonable doubt by the Jury. He allowed the State to over charge the petitioner with double Jeopardy laws indictment in order to enhance the petitioner conviction.

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

requesting the N.H. Supreme Court permission for
consideration of the petitioner fact, Argument, Applicable of Law -

Name and location of the court where the motion or petition was filed:

The State of New Hampshire Supreme Court

Docket or case number (if you know): 2009-01410

Date of the court's decision: October 6, 2010

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Denial of assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Attorney Ghazi D. Al-Marayati, esq. was appointed to the Petitioner for his motion for new trial After the NH Supreme Court remanded the Petitioner case. He failed to provide the assistance of Counsel knowing that he was burdened by an actual conflict of interest by petitioner trial Counsel; appellate that he prejudice this case.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

motion to appoint new counsel after then the Appellate defender's office.

Name and location of the court where the motion or petition was filed:

The New Hampshire Supreme Court -

Docket or case number (if you know): 2009-0440

Date of the court's decision:

July 23, 2010

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :
have used to exhaust your state remedies on Ground Two

GROUND THREE: Prosecutorial Misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Attorney General for the State of New Hampshire
Divided single indictment into multiple prosecution to
commit conspiracy in order to pursue an enhanced penalty.
Allowing the victim to testify falsely and admission of an
act of dishonesty or false statement by the witness
Sara N.

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground Four, explain why:

- (c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

- (d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Helen v. Sullivan, esq Behzad Minhashem, esq -
Public Defenders Office.
- (b) At arraignment and plea: Helen v. Sullivan, esq Behzad Minhashem, esq
Public Defenders Office. 20 Merrimack st
Mach, NH 03301
- (c) At trial: Helen v. Sullivan, esq Aileen O'Connell, esq
Public Defenders office
- (d) At sentencing: Anthony L. Intorcasso, esq, 120 peak street
Manchester, NH 03104
- (e) On appeal: Paul C. Borchardt, esq N.H. Public Defenders Office
44 Franklin street, Nashua, NH 03064 -
- (f) In any post-conviction proceeding: Ghazi D. Al-Marati, esq
802 Main street Melrose, MA 02176 -
- (g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

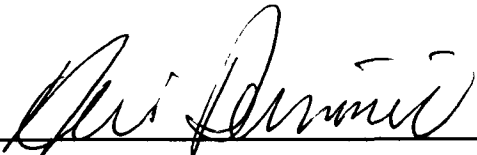
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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

or any other relief to which petitioner may be entitled.



Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 5/10/2012 (month, date, year).

Executed (signed) on 5/10/2012 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

IN FORMA PAUPERIS DECLARATION

[insert appropriate court]

* * * * *

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0140, State of New Hampshire v. Dominic Ali, the court on October 6, 2010, issued the following order:

Because the defendant is represented by counsel on appeal, the court will not rule on his pro se motion requesting permission for consideration of the defendant's facts, argument, and applicable law in support of the brief. See State v. Porter, 147 N.H. 497 (2002).

This order is entered by a single justice (Conboy, J.). See Rule 21(7).

**Eileen Fox,
Clerk**

Distribution:
Appellate Defender
Paul C. Borchardt, Esquire
Mr. Dominic Ali, #81829
Nicholas P. Cort, Esquire
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0140, State of New Hampshire v. Dominic Ali, the court on July 23, 2010, issued the following order:

On July 7, 2010, the defendant filed a *pro se* motion to appoint new counsel, seeking appointment of counsel other than the appellate defender. Under RSA 604-A:2, II, whenever the court appoints counsel for an indigent criminal defendant, it ~~shall~~ appoint the appellate defender "if that office is available." Because the appellate defender has not notified this court that it is unavailable to represent the defendant in this matter, the court has no authority to appoint alternate counsel. Consequently, defendant's motion to appoint new counsel is denied.

This order is entered by a single justice (Conboy, J.). See Rule 21(7).

**Eileen Fox,
Clerk**

Distribution:

Mr. Dominic Ali, #81829
Appellate Defender
Paul C. Borchardt, Esquire
Nicholas P. Cort, Esquire
File